IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1989 of 1982

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIJAN HARJI KHIMJI

Versus

BANKIMCHANDRA SHIVSHANKAR ADHIKARI

Appearance:

1. Civil Revision Application No. 1989 of 1982

MR SURESH M SHAH for the Petitioners

MR CH VORA for the Respondent No. 1

..... for Respondent No. 2-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2002

ORAL JUDGEMENT

This Revision Application arises from the

judgment and order dated 7th October, 1982 passed by the learned Assistant Judge, Kachchh - Bhuj in Civil Regular Appeal no.180/1979. The petitioners before this Court are the appellants - defendants.

It may be stated at the outset that pending this Revision Application the suit premises has been destroyed by an act of vis major. However, the petitioners, if they succeed, may have some claim under the Gujarat Amendment Act No.26 of 2001. It is, therefore, considered necessary to decide the Revision Application on merits.

The respondents - plaintiffs are the owners of the suit premises being a shop situated at Bhuj, Ward No.2 bearing Municipal Census No.2/4/47. The suit shop was leased to the defendants for a monthly rent of Rs.45=00. The plaintiff instituted Regular Civil Suit No.115/1978 in the Court of Civil Judge (J.D.), Kachchh Bhuj for recovery of possession of the suit shop and the arrears of rent. The plaintiffs claimed that the defendant no.1 was irregular in payment of rent; that he was in arrears of rent since 1st December, 1973; that the defendant no.1 had sublet the suit shop to the defendant no.2. The defendant no.1 was, on 23rd November, 1977, given a notice of demand. Under the said notice, the tenancy of the defendant no.1 was terminated. The demand notice was replied to by the defendant no.1 but he did not pay the amount of rent due.

The suit was contested by the defendants by filing written statement (Ex.12). The defendants denied the allegations made by the plaintiffs. It was stated that the standard rent of the suit shop was Rs.10=00 per month. It was denied that the defendants were tenants in arrears. It was also denied that the defendant no.1 had sublet the suit shop to the defendant no.2. It was stated that the defendant no.2 was the wife of the defendant no.1.

The learned Judge was, under the judgment and order dated 19th October, 1979, pleased to hold that the standard rent of the suit shop was Rs.45=00 per month; that the defendant no.1 was the tenant in arrears of rent for six months and more; that the defendant no.1 had neglected to pay the amount of rent due before expiration of period of one month from the date of the receipt of the notice of demand; that the plaintiffs were entitled to recover Rs.1,820=00 being the amount of arrears of rent and Rs.810=00 being the amount of mesne profits for the period from 1st May, 1978 to 31st October, 1979. The

learned trial Judge was pleased to hold that the plaintiffs were entitled to recover the possession of the suit shop as envisaged under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

Feeling aggrieved, the defendants preferred Civil Regular Appeal no.180/1979 in the Court of Assistant Judge, Kachchh - Bhuj. The learned Assistant Judge was, under the impugned judgment and order dated 7th October, 1982, pleased to hold that the defendants were not liable to be evicted and that the defendants were entitled to protection under Section 12(3)(b) of the Rent Act. However, since the defendants had failed to deposit the rent due every month in the Court pending the appeal, they had forfeited right to such protection. The learned Judge was pleased to allow the appeal and pass decree for possession as envisaged under Section 12(3)(b) of the Rent Act. Feeling aggrieved, the defendants have preferred the present Revision Application under Section 29(2) of the Rent Act.

Mr.Shah, the learned advocate appearing for the petitioners has raised twofold contentions. Mr.Shah has submitted that the plaintiffs had prayed for decree for eviction as envisaged under Section 12(3)(a) of the Rent Act. Unless the case for possession under Section 12(3)(a) of the Rent Act were established, no decree for eviction could have been passed against the defendants. In other words, if the plaintiffs failed to establish case for eviction under Section 12(3)(a) of the Rent Act, it is not open to the Court to examine whether the decree for eviction could be passed under Section 12(3)(b) of the Rent Act or not. He has submitted that this proposition has been accepted by this Court in a number of judgments and the issue has been referred to the Larger Bench in the matter of MONGHIBA LAKHAJI V/S. HIRA KUNVAR MULJI (Civil Revision Application No.836/1980). He has contended that until the said reference is decided this Revision should not be proceeded with. He has next contended that in any view of the matter the defendants had raised the dispute as to the standard rent. Unless some interim standard rent were fixed by the Court there was no occasion for the defendants to deposit the standard rent in the Court pending the suit. The question of standard rent was decided by the trial Court alongwith the other issues under the judgment and order dated 7th October, 1982. If there were any default in payment of rent pending the suit, the same can not be a cause for passing decree for eviction. Pending the appeal, the defendants have made deposits of the rent due

regularly every few months. The defendants, therefore, can not be said to have an intention not to pay the rent nor can they be said not ready and willing to pay the rent as envisaged under Section 12(1) of the Rent Act. No decree for eviction, therefore, could have been passed against the defendants. In support of these contentions, Mr.Shah has relied upon an unreported judgment of the Hon'ble Supreme Court in the matter of NOMANBHAI TAIYABALI KOKAWALA V/S. SAFIAYABAI TAIYABALI (Civil Appeal No.2926/1979 decided on 12th October, 1979) and the judgment of this Court in the matter of SOMABHAI KALIDAS PATEL V/S. BACHUBHAI SANKALCHAND MODI [1986 G.L.H. (U.J.) 22].

The Revision Application has been contested by the learned advocate Mr.C.H.Vora. He has relied upon the judgment of this Court in the matter of DECEASED JAGATSINH FATEHSINH THROUGH HEIRS AND L.R. V/S. PARVATIBEN HARISHCHANDRA THROUGH HEIRS AND L.R. [2000(1) G.L.H. 323] and has submitted that the payment of rent is supposed to be made regularly every month and the deposits made at the intervals of 2/3/4 months can not be said to be regular deposit as envisaged under Section 12(3)(b) of the Rent Act and a decree for eviction should necessarily follow.

The facts in the present case are undisputed. It is established that the rent of the suit shop was payable by the month and the defendant no.1 was in arrears of rent for six months and more. In answer to the notice of demand, the defendant no.1 neglected to pay the amount of rent due. Till the date of the suit, no dispute as to the standard rent was raised by the defendant. It is also not disputed that the defendant did raise the dispute as to the standard rent in his written statement and that the standard rent of the suit shop was fixed under the judgment in the suit.

The question is whether it can be said that the plaintiffs had prayed for decree for possession of the suit shop as envisaged under Section 12(3)(a) of the Rent Act. I am unable to read any such claim made in the plaint. The plaint is plain and simple. The plaintiffs have stated the facts which are necessary and have claimed possession of the suit premises. Therefore, it can not be said that the plaintiffs had sought recovery of possession of the suit premises specifically under Section 12(3)(a) of the Rent Act. There is no reason why the Court ought not to examine the claim made by the plaintiffs, whether it falls under Section 12(3)(a) or 12(3)(b) of the Rent Act. I, therefore, reject the

contention that hearing of this Revision Application requires to be postponed till the above mentioned reference is decided by the Larger Bench.

It is indisputable that even after the determination of standard rent under the judgment of the trial Court, the defendants did not deposit the amount of rent regularly every month as and when it fell due. The statement (Ex.19) produced before the Court below indicates that such deposits were made after intervals of 2/3/4 months. Mr.Shah has strenuously urged that the deposits made by the defendant no.1 do disclose the intention of the defendant no.1 to pay the rent. Hence, it can not be gainsaid that the defendant no.1 was ready and willing to pay the rent. He has heavily relied upon the observation made in the matter of Somabhai Kalidas Patel (supra). He has submitted that the legislative intent as disclosed by the amendment of Section 12(3)(b) of the Rent Act under Gujarat Act No.7 of 1985 is explicit and, even if the Gujarat Act No.7 of 1985 has no applicability in the present matter, the readiness and willingness of a tenant to pay the rent has to be examined keeping in view the said legislative intent. In the matter of Somabhai Kalidas Patel (supra), this Court has observed that, "...The word 'regularly' has been interpreted in various decisions of this court and now there is a legislative amendment whereby the requirement of the tenant paying rent regularly is done away with. It is a finding in this case that the tenant had not paid all the arrears of rent on the day of the judgment in the trial court. But it is a finding of the lower appellate court that the tenant had paid all the arrears of rent before the judgment in the appeal." On the above facts the Court proceeded to hold that the tenant was not in arrears as he had deposited all the rent in the trial Court before the judgment. In the matter of Nomanbhai Taiyabali Kokawala (supra) also the tenant had failed to deposit the amount of arrears of rent at the rate of the standard rent fixed by the Court. Since the deposits made by the tenant fell short of the amount due a decree for eviction was passed against the tenant. In the appeal before the Hon'ble Supreme Court, the Hon'ble Court held that the shortfall in the deposit made by the tenant was due to miscalculation on the assumption that the standard rent was less than what it was. On realizing his mistake, the tenant made good the balance. The Hon'ble Court, therefore, held that the tenant was ready and willing to pay the rent as required by Section 12(1) of the Bombay Rent Act. The Hon'ble Court observed that "interpretation must share the statutory purposes which, here is ameliorative towards the tenant, within

limits."

In my view, the above judgment of the Hon'ble Supreme Court in the matter of Nomanbhai Taiyabali Kokawala (supra) shall have no application to the facts of the present case. That was a case where the tenant fell short of the rent due on account of some mistake. In the present case, it is not even the case of the tenant that he was acting under some mistake or that the deposits were made at certain intervals on account of some compulsion or of reasons beyond the control of the tenant. The judgment in the matter of Somabhai Kalidas Patel (supra) also shall lend no support to the defendants. Since the date of the said judgment the Division Bench of this Court has, in the matter of BAI SAKARBHAI DEVRAJ V/S. IBRAHIM ABDUL GANIBHAI PANKHIDA [1994(2) G.L.R. 1091], held that amendment to Section 12(3)(b) of the Rent Act (under Gujarat Act No.7 of 1985) is prospective in its application and shall not apply to the pending litigations. If the said amendment is prospective in its application, it can not be applied to the pending proceedings by bringing in the principles analogous to the amendment giving the amendment retrospective effect. As to Section 12(3)(b) of the Rent Act (as it stood prior to its amendment under the Gujarat Act No.7 of 1985) the law is quite well settled. As held by the Hon'ble Supreme Court in quite a few cases and by this Court in several cases, the regular deposit envisaged under Section 12(3)(b) of the Rent Act has to be made every month regularly. Payment made at the intervals of 2/3/4 months as has been done in the present case is not sufficient to confer protection under Section 12(3)(b) of the Rent Act upon the erring tenant (that is the opinion reiterated in 2000(1) G.L.H. 323).

In the result, the Revision Application is dismissed with costs. Rule is discharged. Interim stay stands vacated.

(Ms. R.M.Doshit, J.)

/sakkaf